

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re: Ronald E. Jenkins

Debtor(s)

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**Chapter 7
Case No. 05-13892-MWV**

**Hearing Date: October 5, 2006
Hearing Time: 11:00 a.m.**

**MOTION OF CHAPTER 7 TRUSTEE FOR AUTHORITY TO SELL
CERTAIN REAL ESTATE FREE AND CLEAR OF LIENS, CLAIMS AND
ENCUMBRANCES PURSUANT TO 11 U.S.C. §363(b) AND §363(f)
(+/- 271 ACRES 203 GOVERNOR'S ROAD, BROOKFIELD, NH)**

Now Comes Steven M. Notinger, Chapter 7 Trustee for the estate of Ronald E. Jenkins (the "Trustee"), through his attorneys Donchess & Notinger, PC, and requests, pursuant to §363 of the United States Bankruptcy Code, Fed. R.Bankr.P. 6004 and 6006 and LBR 6004-1, authority to sell the estate's interest in certain real estate known as 203 Governor's Road, Brookfield, NH 03872, which consists of approximately 271 acres of land, containing a travel trailer and a shed ("the Real Estate") in accordance with the terms and conditions of that certain Purchase and Sales Agreement and Deposit Receipt dated September 5, 2006 by the Buyer, and September 7, 2006 by the Trustee (the "Purchase Agreement") annexed hereto as Exhibit "A."

Pursuant to this Motion, the Trustee seeks to sell the Real Estate to Michelle M. Dumas and James D. Dumas, of 146 Blackwater Road, Somersworth, NH or their nominee ("the Buyer") for a purchase price of \$200,000.00. As grounds for this Motion, the Trustee states that in the exercise of his business judgment, the transaction contemplated by the Purchase Agreement maximizes the value of the Real Estate and thus the proposed sale is in the best interest of the Estate. In addition, the Trustee believes that the proposed sale will generate the best return for creditors under the circumstances. Accordingly, the Trustee requests this Court to enter an order authorizing him to sell the Real Estate to the Buyer. The Trustee states in support of his Motion, the following:

I. GENERAL BACKGROUND

1. The Debtor filed a Chapter 7 Petition on or about September 22, 2005 and Steven M. Notinger was appointed as Chapter 7 Trustee.

2. The only valuable asset listed on the Debtor's schedules was the Real Estate, which the Debtor valued at \$50,000.00, but later admitted was worth substantially more.

3. Shortly after his appointment, the Trustee employed Coldwell Banker Residential Brokerage (Robert Casoni), as realtor to the Trustee ("the Broker") to list the Real Estate for sale as he believed the Real Estate had substantial equity.

4. The Debtor claimed a homestead interest in the Real Estate and the Trustee objected, believing that the Debtor does not live on the Real Estate and/or it does not meet the definition of a homestead under state law. In response, the Debtor has filed a Motion to Dismiss his case, to which the Trustee has objected. Both matters are still pending.

5. The Debtor has creditors who have filed proofs of claim for approximately \$45,303.42. The Trustee gave the Debtor ample time to reach a settlement with him (by obtaining a mortgage on the Real Estate, etc.) to pay his creditors so that the Debtor could retain the Real Estate, which the Debtor desires to do. The Debtor has proposed paying the Trustee by allowing the Real Estate to be timbered, and paying the net proceeds to the Trustee. However, when the Trustee contacted the Debtor's proposed timberer, he had not sought a permit to do the timbering. When the Trustee contacted the town through his realtor to inquire about timbering, the town of Brookfield expressed doubts that a timbering permit would be issued for the Real Estate as the Real Estate was timbered in the recent past. Therefore, timbering the Real Estate and paying the proceeds to the Trustee does not appear to be a viable option to resolve this matter.

II. THE PROPOSED SALE

6. The principal terms of the Purchase Agreement are as follows:

- (a) Assets to Be Purchased by Buyer: Buyer has offered to purchase the Real Estate.
- (b) Purchase Price: Buyer has offered to purchase the Real Estate for the sum of \$200,000.00.
- (c) Deposit: In connection with submitting the Purchase Agreement, Buyer has provided the Broker a deposit in the sum of \$5,000.00

- (d) Closing: The Purchase Agreement requires that a closing occur on or before October 12, 2006.
- (e) Contingencies: The purchase of the Real Estate by the Buyers is subject to a financing contingency for 70% of the purchase price and bankruptcy court approval.

III. LIENS ENCUMBERING THE REAL ESTATE

- 7. The following liens have been identified by the Trustee as encumbering this asset:
 - a. Real Estate taxes owed to the town of Brookfield, NH in the approximate amount of \$9,300.00, not including any unpaid taxes for tax year 2006, for which the bill has not yet been issued (*last tax bill for 2005 was for \$1,401.00). The Trustee estimates that the outstanding taxes at the time of sale will be approximately \$10,468.00.
 - b. Debtor's disputed homestead interest in the amount of \$100,000.00.
 - c. There are no other liens on the Real Estate.

The Trustee requests that the Court allow the sale, with any liens in the Real Estate to attach to the proceeds of the sale to the extent of their validity, perfection and priority, unless stated otherwise herein, subject to further Court order.

IV. APPROVAL OF THE SALE OF THE REAL PROPERTY IS IN THE BEST INTERESTS OF THE ESTATE AND SHOULD BE AUTHORIZED BY THIS COURT

8. This Court should approve the sale of the Real Estate on the terms and conditions as set forth in the Purchase Agreement and this Motion. The transaction provided in the Purchase Agreement was negotiated at arm's length and in good faith by the Trustee, after consideration of all possible purchasers. The terms of the arrangement are fair and reasonable and the Trustee believes such terms are designed to yield the maximum value to the Estate, which should be a 100% recovery for the creditors. In addition, the sale of the Real Estate should also moot the need to try the homestead issue as the sale will yield enough funds to pay the creditors of the estate and refund the difference to the Debtor, which should be more than his disputed \$100,000.00 homestead exemption.

The sale is better than waiting for the Debtor to come up with a resolution as he appears to have no financial ability to do so. He has had almost a year to propose a viable option other than a sale and has failed to do so.

9. This Court has statutory authority to authorize the sale of the Real Estate free and clear of all liens, claims, encumbrances and interests to any person or entity submitting the highest and best offer at the sealed bid auction. 11 U.S.C. §§ 363(b)(1), (f)(1)-(3) and (5). The sale is “as is” “where is” without any representations of any kind by the Trustee.

V. CONSENT OF DEBTOR

10. The Trustee believes the Debtor will object to the sale.

V. DISTRIBUTION OF SALES PROCEEDS

11. The Trustee proposes the following distribution of the \$200,000.00 sales proceeds: any prorated real estate taxes, the Broker’s 10% commission, all usual and regular closing expenses of the seller, including any transfer taxes of the seller, will be paid at closing; with the remainder of the funds to be held by the Trustee pending either his final report and distribution (which he will expedite) and/or a settlement with the Debtor approved by the Court.

VI. NOTICE

12. Copies of the Notice of Hearing detailing this Motion have been served by first class mail upon the United States Trustee, secured creditors (if any) all parties who have filed an appearance in this case, all listed creditors, the Debtor and counsel, the realtor and any other potential interested buyers of which the Trustee is aware. The Notice contains counter-offer procedures. The Trustee requests that this Court find such counter-offer procedures and service to be appropriate and sufficient notice of this Motion in the particular circumstances.

WHEREFORE, the Trustee request that this Court enter an Order:

(A) Authorizing the Trustee to sell the Real Estate to the Buyer or the highest bidder, if one exists, on the terms and conditions set forth in the Purchase Agreement free and clear of liens, claims, encumbrances and interest under 11 U.S.C. §363(f) with such liens, if any,

to attach to the proceeds of the sale to the extent of their validity, perfection and priority,
unless stated otherwise herein;

(B) Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

Steven M. Notinger, Chapter 7 Trustee for the
Estate of Ronald E. Jenkins
By His Attorneys,
DONCHESS & NOTINGER, P.C.

Date: 09/15/06

By: /s/ Deborah A. Notinger
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